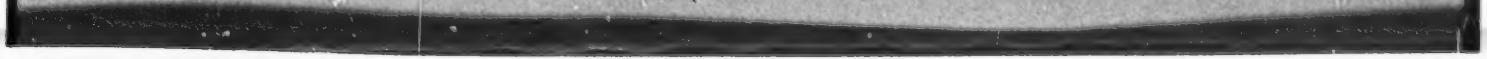

SUPREME COURT, U. S.
OCT 9 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-252

LAWRENCE E. BIESKI, ET AL., *Petitioners*

v.

EASTERN AUTOMOBILE FORWARDING COMPANY, INC., M & G CONVOY, INC., and HIGHWAY TRUCK DRIVERS AND HELPERS, LOCALS 107 AND 326, Unincorporated Associations Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Eastern Conference Automobile Transporters Joint Committee, *Respondents*

BRIEF OF M & G CONVOY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF M & G CONVOY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Now comes M & G Convoy, Inc., a defendant below and one of the Respondents in this Court, and opposes grant of a writ of certiorari to review the final judgment of the United States Court of Appeals for the Third Circuit which was entered in this case on June 11, 1974.

QUESTIONS PRESENTED

In the judgment of this Respondent, the sole question presented by this petition may fairly be restated as follows:

Whether a court can interfere with a decision made by a joint employer-union grievance committee in

the absence of fraud, collusion or a breach of the duty of fair representation. Respondent submits that question must be answered in the negative. A subsidiary question raised by the Petition may be whether the duty of fair representation which is imposed upon a union by virtue of its designation as the exclusive bargaining representative of a group of employees applied to representatives of different unions sitting on a joint employer-union grievance committee. Again, the respondent submits that the question must be answered in the negative.

STATUTES INVOLVED

In addition to Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185(a), cited by the petitioners, this Respondent submits that Section 203(d) of the same Act, 29 U.S.C. § 173(d), is equally applicable:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

COUNTER STATEMENT OF THE CASE

One type of dispute which must routinely be handled in the administrative of every collective baragaining agreement is that which results from the partial or complete cessation of operation by one of the employer-parties to the contract. In the trucking industry, this type of dispute very often results from the acquisition by one employer of some or all of the business of another employer. As this Court recognized in *Humphrey* v. *Moore,* 375 U.S. 335, 346 (1964), these are "commonplace events" in the transportation industry.

Following such an event, "the recurring question is . . . [which] employees . . . are to have the first call upon the available work." *Id.* Simply because such events are commonplace, the transportation industry, and the unions which represent employees in that industry, have over the years evolved a system of joint employer-union arbitration to resolve this question of seniority among the driver-employees of the companies involved. In *Truck Drivers Union* v. *Riss & Co.*, 372 U.S. 517 (1963), and again in *Humphrey* v. *Moore, supra,* this Court held the awards of such tribunals to be immune from judicial review. Once again, this Court is called upon to review decisions of two lower federal courts which quite properly refused to intervene in a matter which has traditionally been left to employer-union arbitration committees.

M & G Convoy, Inc. (hereafter "M & G" or "M & G Convoy") and Eastern Automobile Forwarding Co., Inc. (hereafter "Eastern") were both common carriers engaged in the transportation of automobiles throughout parts of the eastern United States. Both groups of employees were represented by Teamsters Local 107, Philadephia, and they were both covered by the same labor contract, the Eastern Conference Area Truckaway and Driveaway Agreement. *Bieski* v. *Eastern Automobile Forwarding Company,* 231 F.Supp. 710, 713 (D. Del. 1964).[1] As a result of increased rail competition, economic conditions forced Eastern out of business in early 1964. M & G Convoy purchased all of Eastern's real estate and substan-

[1] The essential underlying facts are not in dispute. This specific finding was also made by the Court of Appeals. 354 F.2d 416, fn. 1 (3d Cir. 1965). It was reaffirmed by the trial court on August 2, 1967, J.A. 56, 60 and, again, by the Court of Appeals. 396 F.2d 32, 35 (3d Cir. 1968).

tially all of its operating equipment, but did not purchase its other assets, liabilities, certificates, good will or accounts receivable. By January of 1964, M & G Convoy was transporting all cars formerly handled by Eastern. 231 F.Supp., at 712.

Certain of the driver-employees of Eastern sought, and attained, employment with M & G. 396 F.2d, at 34. A controversy developed between those employees and the original M & G employees over seniority rights. *Id.* The collective bargaining agreement to which Eastern, M & G and the unions were parties contained provisions designed to govern this dispute. Article 4, Section 1 provided: "Terminal seniority will be maintained . . . ." Article 4, Section 5 provided:

> "In the event that an Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved. Any controversy with respect to such matter shall be submitted to the grievance procedure (Article 6)."

Article 6 then provided a multi-step grievance procedure culminating in a joint employer-union committee known as the Eastern Conference Automobile Transporters Joint Committee (hereafter "Joint Committee"). The Joint Committee was established to settle disputes and grievances which could not be settled at a lower level; it was empowered to hear witness and take evidence in support of the respective positions; it was further empowered to investigate all facts pertaining to the dispute. That Article further provided that a Joint Committee deadlock was to be submitted

to an impartial arbitrator and it also provided that in the event of non-compliance with a decision, the parties had the immediate right to legal and economic recourse. Article 6, Section 6 concluded:

> "Unless otherwise expressly provided in this Agreement, any and all disputes, including interpretations of contract provisions, arising under, out of, in connection with, or in relation to this collective bargaining agreement shall be subject to the grievance procedure of this Agreement."

See 231 F.Supp., at 713; 396 F.2d, at 34-35. It was, in short, a comprehensive system for the private settlement by the parties of all disputes arising under the contract.

In 1964, the Joint Committee, after hearing the case, concluded that there had been no "absorption" within the meaning of Article 4, Section 5 of the collective bargaining agreement and that, as a result thereof, the Eastern drivers had no seniority rights at M & G. In effect, to the extent any Eastern drivers were employed by M & G, this meant that they took seniority at the bottom of the M & G seniority list, beneath the seniority which had already been earned by existing M & G employees. 231 F.Supp., at 714-715; 396 F.2d, at 36.

A group of former Eastern employees then commenced this litigation in the United States District Court for the District of Delaware. The Complaint was filed in January 1964. It alleged dishonesty and collusion between the employers and the union involved and, as to the union, it alleged the breach of the union's duty of fair representation. J.A. 19-34.[2]

[2] "J.A." references are to the Joint Appendix filed in the Court of Appeals in No. 73-1882, the case from which the petition ema-

A preliminary injunction was sought and in July 1964 Chief United States District Judge Caleb M. Wright denied that injunction. 231 F.Supp. 710. The Court of Appeals for the Third Circuit affirmed that denial. 354 F.2d 414. Significantly, in denying the plaintiffs' motion for preliminary injunction, the trial court found:

> ". . . there is no indication that a conspiracy was formed to coerce or persuade the Committee unjustly to find no absorption . . . . There is no substantial evidence that the employers and the Union conspired to subvert the function of the Committee . . . ."
>
> * * *
>
> "The evidence is insufficient to support these contentions, and, more important, it does not substantiate the charge that the Union acted in a manner inconsistent with its duty to represent the

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nates. The many opinions of the trial court and of the Court of Appeals are there found:

(a) Opinion denying plaintiffs' motion for preliminary injunction—J.A. 35-49, July 16, 1964; also found at 231 F.Supp. 710.

(b) Opinion affirming—J.A. 50-55, December 29, 1965; also found at 354 F.2d 414.

(c) Opinion granting defendants' motions for summary judgment—J.A. 56-60, August 2, 1967.

(d) Opinion reversing in part with directions—J.A. 61-80, May 29, 1968; also found at 396 F.2d 32.

(e) Opinion reversing Joint Committee decision—J.A. 142-151, July 9, 1970.

(f) Opinion again reversing Joint Committee decision—J.A. 295-305, March 2, 1973.

(g) Opinion sustaining Joint Committee decision—J.A. 454-464, July 12, 1973.

This latter decision was affirmed without opinion by the Court of Appeals. Petitioners' Appendix A.

best interests of its members." 231 F.Supp., at 716.

The Court of Appeals did not disagree. 354 F.2d, at 417.

During the course of the original arbitration proceedings, Teamsters Local 107 maintained a neutral position. 231 F.Supp., at 714. During the early course of the litigation, however, the stewardship at Teamsters Local 107 (and their legal representation) changed hands. 354 F.2d, at 417; 396 F.2d, at 36. From that point on, Teamsters Local 107 espoused the cause of the former Eastern drivers in all further proceedings before the Joint Committee. Having denied a preliminary injunction, the trial court then proceeded to a hearing on the merits and, in an unreported decision in August of 1967 (see J.A. 56-60), Judge Wright considered cross-motions for summary judgment, denied that of the plaintiffs and granted that of the defendants. In that opinion, the trial court reiterated its findings of fact against the plaintiffs:

> "Accordingly, the Court finds that its previous statement of facts is unaltered . . . . The Court is further of the opinion that the factual and legal issues involved have been fully discussed in its previous opinion of July 16, 1964 [J.A. 35-49; 231 F.Supp. 710] . . . . Therefore, the Court deems it appropriate to do no more than reaffirm its opinion of July 16, 1964 . . . adopting the facts and conclusions of that opinion, and incorporating them by reference herein." J.A. 56, at 59-60.

Again, the plaintiffs appealed. In May 1968, the Court of Appeals reversed, one judge dissenting. 396 F.2d 32. Before doing so, however, the court affirmed the facts as found by the trial court:

> "On this record . . . we affirm the conclusion of the District Court that the appellants failed to

> show a breach of the duty of fair representation sufficient to allow the courts to interfere on that basis with the agreed-upon private determination of a labor dispute." 396 F.2d, at 37.

The reversal was on the very narrow ground that the Joint Committee decision to the effect that there had been no "absorption" within the meaning of the contract was "jurisdictional" in nature. The Court of Appeals reasoned that it had a broader scope of review on such "jurisdictional" rulings by joint employer-union arbitration panels than it did on rulings which went to the merits of, and actually decided the seniority issue in, the case.[3] The case was remanded through the trial court to the Eastern Conference Automobile Transporters Joint Committee with what amounted in instructions to determine the seniority status of the Eastern employees as if there had been an "absorption" by M & G of Eastern. 396 F.2d, at 42.

Following remand, there were new hearings before the Joint Committee. At the first such hearing, the Joint Committee, apparently considering itself free to find anew that there had been no "absorption", rejected the argument of Teamsters Local 107, and found no "absorption". This was set aside by the trial court as having been contrary to the opinion of the Court of Appeals. J.A. 142. Following yet another remand by the trial court on the same "jurisdictional" grounds, J.A. 295, the Joint Committee met again, agreed that the seniority dispute must be decided in view of the fact that "the Court held that M & G did absorb Eastern" and proceeded to determine seniority in accordance with that conclusion. J.A. 447-450. Once again, dissatisfied with this new result, the former

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[3] That decision has been criticized. See Note, 55 Va. L.Rev. 368 (1969).

Eastern employees went to court. This time, the United States District Court applied the traditional principle which it (and the Court of Appeals) had all along recognized, that decisions on the merits of seniority disputes, where committed by the parties to a form of arbitration, are not to be set aside absent the traditional exceptions of fraud, collusion, breach of contract or a finding that the union was in a breach of its duty of fair representation. J.A. 454-464.[4] The trial court rejected any such conclusions and in effect affirmed the decision of the arbitral tribunal. *Id.* The Court wrote:

> "The plaintiffs have repeatedly requested that the Court undertake either a comprehensive review of the merits of the Joint Committee decision or that it determine the seniority issues. The Court has consistently refused either course and has limited its efforts to insuring that the Joint Committee fulfill its contractual obligations by assuming jurisdiction over the seniority dispute. This

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[4] The courts below never had any doubt of that legal principle. In its first opinion, the trial court had held:

> "Where within the framework of labor agreements, unions and management have provided by contract for the settlement of disputes, the courts have sought to foster the collective bargaining process by refusing to interfere with decisions reached through the procedure established by the parties. Absent fraud or conspiracy, the courts have pursued a 'hands-off' policy." 231 F.Supp., at 715 (footnote omitted).

He reiterated this conclusion in two later opinions. J.A. 56, at 60; J.A. 454, at 461:

> "Therefore, the review of the merits of the decision is limited to cases of fraud, deceit and breach of a duty of fair representation. These issues have been decided previously, and the plaintiffs have submitted no additional evidence to alter the Court's prior determination."

And, see J.A. 463-464. The Court of Appeals never disagreed with this principle.

having been accomplished, the Court has no further power of review in this controversy." J.A. 463-464.

This time the Court of Appeals affirmed without opinion and, after 10 years of litigation, the plaintiffs have brought the case to this court.

REASONS FOR DENYING THE WRIT

1. As this case finally comes to this Court, it presents no new or novel questions despite the fact that it has been lingering in the judicial system for ten years. Each court which has reviewed this case, the District Court on at least four occasions and the Court of Appeals for the Third Circuit on three (see fn. 2, *supra*), applied the standards set out by this Court in an unbroken line of cases beginning with *Ford Motor Co.* v. *Huffman,* 345 U.S. 330 (1953), running through the "steelworkers trilogy", *Steelworkers* v. *American Mfg. Co.,* 363 U.S. 564 (1960); *Steelworkers* v. *Enterprise Corp.,* 363 U.S. 593 (1960); *Steelworkers* v. *Warrior & Gulf Co.,* 363 U.S. 574 (1960), and culminating in the trucking industry with cases such as *Truck Drivers Union* v. *Riss & Co.,* 372 U.S. 517 (1963), and *Humphrey* v. *Moore,* 375 U.S. 335 (1964). These cases and scores of others in the federal appellate [5] and trial

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[5] Simply by way of illustration, see *Ludwig Honold Mfg. Co.* v. *Fletcher,* 405 F.2d 1123 (3d Cir. 1969); *Fuller* v. *Highway Truck Drivers and Helpers Local 107,* 428 F.2d 503 (3d Cir. 1970); *Price* v. *International Bro. of Teamsters, etc.,* 457 F.2d 605 (3d Cir. 1972); *Safeway Stores* v. *American Bakery & Con. W.I.U., Local 111,* 390 F.2d 79 (5th Cir. 1968); *Wilson* v. *Kroger Co.,* 369 F.2d 85 (6th Cir. 1966); *Morris* v. *Werner-Continental, Inc.,* 466 F.2d 1185 (6th Cir. 1972); *Andrus* v. *Convoy Company,* 480 F.2d 604 (9th Cir. 1973), *cert. denied* 414 U.S. 989 (1973). In the typically direct language of Judge John R. Brown of the Fifth Circuit: "The arbiter was chosen to be the Judge. That Judge has spoken. There it ends." 390 F.2d, at 84. See also Dunau, *Three Problems in Labor Arbitration,* 55 Va. L.Rev. 427 (1969). The National Labor Relations Board follows the same approach. *Collyer Insulated Wire,* 77 L.R.R.M. 1931 (1971).

courts have established the proposition that in situations in which the parties have provided for the final adjustments of contract disputes, the courts will not interfere in the absence of fraud, collusion, infidelity to the contract, lack of due process or a basic illegality in the award. With the very narrow exception of the original ruling by the Court of Appeals requiring the arbitral body to come to grips with the merits of the seniority dispute and not content itself with what the Court of Appeals described as a "jurisdictional" decision, each court which reviewed this case over the past decade has applied that rule. See 231 F.Supp., at 715; J.A. 56, at 60; J.A. 454, at 461. Once the arbitral body did reach the merits, the courts quite properly adopted a hands-off policy. J.A. 463-464. No court has suggested any impropriety in the manner by which the joint employer-union committee arrived at its decision on the merits once it reached the merits of this controversy. See 231 F.Supp., at 716; 354 F.2d, at 417; J.A. 56, at 60; 396 F.2d, at 37; J.A. 454.

Congress has expressly declared that the private settlement of industrial disputes is desirable. Section 203(d) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 173(d), expressly so provides:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

The courts, including this Court, have made it clear that the "final adjustment" of which the Congress spoke may either be by outside arbitrators [6] or by com-

[6] As in the "steelworkers trilogy."

mittees of the contracting parties. Such joint committee awards have precisely the same effect as outside arbitration awards. *Truck Drivers Union* v. *Riss & Co.*, 372 U.S. 517 (1963). Thus, "if the award at bar is the parties' chosen instrument for definitive settlement of grievances under the Agreement . . . it is of course not open to the courts to reweigh the merits of the grievance." *Id.*, at 519. That is precisely what the petitioners, having failed in the courts below, now ask this Court to do.

With this Court having held in *Truck Drivers Union* v. *Riss & Co.* and *Humphrey* v. *Moore*, both *supra*, that contract grievance awards are entitled to the same weight as those emanating from other private arbitration tribunals, the exceptions to the rule of finality accorded such awards must be limited to those which are applied to awards by outside arbitrators: infidelity to the contract, lack of due process, a basic illegality in the award or collusion in the arbitral process. This Court precisely so held in *Truck Drivers Union* v. *Riss & Co.*, 372 U.S., at 519. To the extent that the complaint even suggested any of these elements, the courts below have consistently and repeatedly rejected them in the exercise of their fact-finding powers. In denying the plaintiffs' original motion for preliminary injunction, the trial court found:

> "... there is no indication that a conspiracy was formed to coerce or persuade the Committee unjustly to find no absorption .... There is no substantial evidence that the employers and the Union conspired to subvert the function of the Committee ...."
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> * * *
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> "The evidence is insufficient to support these contentions, and, more important, it does not sub-

> stantiate the charge that the Union acted in a manner inconsistent with its duty to represent the best interests of its members." 231 F.Supp., at 716.

The Court of Appeals did not disagree. 354 F.2d, at 417. In granting summary judgment for the defendants, the trial court reiterated its findings of fact against the plaintiffs:

> "Accordingly, the Court finds that its previous statement of facts is unaltered . . . . The Court is further of the opinion that the factual and legal issues involved have been fully discussed in its previous opinion of July 16, 1964 [J.A. 35-49; 231 F.Supp. 710] . . . . Therefore, the Court deems it appropriate to do no more than reaffirm its opinion of July 16, 1964 . . . adopting the facts and conclusions of that opinion, and incorporating them by reference herein." J.A. 56, at 59-60.

Even in reversing, the Court of Appeals affirmed the facts as found by the trial court:

> "On this record . . . we affirm the conclusion of the District Court that the appellants failed to show a breach of the duty of fair representation sufficient to allow the courts to interfere on that basis with the agreed-upon private determination of a labor dispute." 396 F.2d, at 37.

Finally, the trial court again concluded:

> "Therefore, the review of the merits of the decision is limited to cases of fraud, deceit and breach of a duty of fair representation. These issues have been decided previously, and the plaintiffs have been submitted no additional evidence to alter the Court's prior determinations." J.A. 454, at 461.

This Court must reject, as it has always rejected, the petitioners' invitation to invade the fact finding process properly committed by law to the lower courts.

The facts reveal a grievance body confronted with a "commonplace event" in the trucking industry—a situation in which, because of the economic collapse of one employer, two groups of employees are competing for the same jobs and the same seniority. The fact that these two groups are represented by the same union is of no moment. Any allegation of impropriety resulting therefrom was specifically put to rest by *Humphrey* v. *Moore,* 375 U.S., at 349-350; and see *Fuller* v. *Highway Truck Drivers and Helpers Local 107,* 300 F.Supp. 643, 648 (E.D. Pa. 1969), *aff'd* 428 F.2d 503 (3d Cir. 1970). If the former Eastern employees were placed at the bottom of the seniority list at M & G, they would have a grievance. If they were integrated into the existing M & G seniority lists, the M & G employees would have a grievance. It was precisely for the purpose of resolving this type of problem that joint employer-union grievance committees have been established within the trucking industry.[7] It has been recognized for years that a collective bargaining agreement is "more than a contract: it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate." *Steelworkers* v. *Warrior &*

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[7] The contract in question leaves the seniority dispute to determination by means of the grievance procedure. Article 4, Section 5, in pertinent part, provides:

> ". . . the seniority of the employees . . . affected thereby shall be determined by mutual agreement between the Employer and the Union involved. Any controversy with respect to such matter shall be submitted to the grievance procedure (Article 6)."

See 231 F.Supp., at 713.

Gulf Co., 363 U.S. 574, 578 (1960). It is an effort "to erect a system of industrial self-government." *Id.*, at 580. "The processing of disputes through the grievance machinery [of a collective bargaining agreement] is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *Id.*, at 581. "The grievance procedure is, in other words, a part of the continuous collective bargaining process." *Id.* See, also, Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1498-99 (1959). This Court has continually so held and this case presents no occasion to vary these rulings.

2. The petitioners make another argument. It is an argument that was not presented until the very last time this case was before the Court of Appeals. Since the Court of Appeals affirmed without opinion, there is no lower court opinion on this point. The point, simply stated, is that union members of joint employer-union grievance committees are bound by the same duty of fair representation as are the unions (and their agents) which specifically represent employees. The argument is wrong. It proceeds from a mistaken impression of the origin of the duty of fair representation. If accepted, notwithstanding petitioners' protestations to the contrary (Petition, p. 9), it would be destructive of established contract grievance procedures providing for joint employer-union committees.

The duty of fair representation arises from the position of a union as the exclusive bargaining representative for employees of a given employer. Traditionally, if a union seeks to represent a given unit of employees and a contest ensues, the National Labor Relations Board conducts an election. If the union

wins that election, it is then certified as the exclusive collective bargaining representative, not only of those employees who voted for the union, but of all employees within the bargaining unit. Quite obviously, this may often include employees who had no desire to be represented by the union and even those who were adverse to the union. This premiere position with which the federal labor law endows such a union carries with it a fiduciary duty that the union fairly represent *all* of the employees in the bargaining unit; not just those who favor the union, not just those who are union members, but all covered employees. This, then, is the origin of the duty of fair representation which the courts have imposed upon unions and which can be enforced in suits at law by union members whose rights thereunder have been abridged. As one court has fairly summarized:

> "The fiduciary duty of fair representation in the negotiation, administration and enforcement of collective bargaining agreements has been imposed upon unions by federal law as an obligation correlative to the right of a union to represent all the employees in the bargaining unit as their exclusive bargaining agent despite the contrary wishes of a minority. The duty originated in cases under the Railway Labor Act in which railroad unions were charged with racial discrimination. It has since been expanded as a principle of general application to collective bargaining representatives, who are required to 'serve the interest of all members without hostility or discrimination toward any, to exercise [their] discretion with complete good faith and honesty, and to avoid arbitrary conduct'." *Bazarte* v. *United Transportation Union*, 429 F.2d 868, 871 (3rd Cir. 1970) (footnotes omitted).

See, also, *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967); *Humphrey* v. *Moore*, 375 U.S. 335, 342 (1964); Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Cal. L. Rev. 663 (1973).

Given the origin of the duty of fair representation, and the fact that it is imposed upon a union by virtue of that union's certification as the exclusive bargaining representative for a unit of employees, it is impossible to conclude that union members of a joint employer-union grievance committee are governed by any such duty. In the first place, as the record here amply demonstrates, representatives of a union whose members are the grievants do not sit on the committee which hears such a case. In this instance, none of the union representatives on that panel were officers, employees or representatives of Teamsters Local 107. J.A. 310-311. The duty of fair representation imposed upon Teamsters Local 107 as a result of its certification as the exclusive bargaining representative for the Eastern drivers cannot be transferred to the union members of the grievance panel. These men are arbitrators and judges—not advocates. While they may bring with them certain labor- or management-oriented predispositions, they are not "representatives" in any legal sense. To make such an argument indicates a basic misconception of the origin of the duty of fair representation.

The argument contains an even greater vice. Carried to its logical extreme it would destroy the joint-committee system. If union members of joint employer-union arbitration tribunals are bound by such a duty, they would logically be bound, in all but the most egregious case, to support the union proponents before them. Logically, this would mandate a "dead-

lock" in almost every case; and, in the many instances in which the collective bargaining agreement does not provide for final neutral arbitration, it would leave the parties to the collective bargaining agreement to pursue any economic remedies which they had. In effect, a union in almost every case, no matter how insignificant, could take economic actions—could strike—to obtain its objective. Nothing could be more destructive of "a system of industrial self-government," *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. at 580, then such a ruling. As this Court observed in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 455 (1957):

> "Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike."

CONCLUSION

In 1967, the trial court wrote:

> "This suit is already three years old, and time is an unsettling factor, especially in litigation of this nature." J.A. 56, at 60.

Six years later, in 1973, the trial court again observed:

> "The case is presently before the Court on the motion of M & G for an order enforcing the joint Committee's most recent decision. In essence, M & G is desirous of a prompt determination by the Court of whether the Joint Committee has finally complied with the order of this Court . . . . Although of a somewhat unusual nature, M & G's request for immediate review of the Joint Committee decision is certainly understandable given the rather tortured path of this litigation.
>
> "In light of this factor and the obvious difficulties confronted by M & G in attempting to observe the directive of the Joint Committee under its

> contractual obligations as well as the orders of this Court, the Court is of the opinion that it should entertain M & G's motion . . . ." (J.A. 454, at 460.

It did so and found it to be in full compliance. *Id.*, at 454-464.

M & G Convoy for ten years now has been engaged in this dispute over the seniority status of the former Eastern employees whom it hired. For ten years it has stood ready to abide by whatever decision the joint employer-union committee reached. For ten years the decisions of that body have been in the courts. Those decisions have now finally been made on the merits of the dispute and upheld by both lower courts. Now the petitioners seek a review of that decision on the merits by this Court. This they cannot have, as a long line of cases from this Court and from other courts clearly hold. M & G, the employer, is entitled finally to have its peace. We respectfully submit that the Court should deny the petition for a writ of certiorari.

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